

# House Study Bill 208 - Introduced

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE  
ON JUDICIARY BILL BY  
CHAIRPERSON BALTIMORE)

## A BILL FOR

1 An Act to establish requirements relating to the transfer  
2 of an interest in real estate by or on behalf of certain  
3 entities formed or organized on a profit, cooperative,  
4 or not-for-profit basis, and including warranties and a  
5 limitation on actions.  
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

STATEMENT OF AUTHORITY

Section 1. Section 486A.303, subsection 7, Code 2013, is amended to read as follows:

7. ~~Unless earlier canceled, a filed~~ A statement of partnership authority is canceled by operation of law five years after the date on which the statement, or the most recent amendment, was filed with by the secretary of state is effective until amended or canceled, unless an earlier cancellation date is specified in the statement.

Sec. 2. Section 489.302, subsection 10, Code 2013, is amended to read as follows:

10. ~~Unless earlier canceled, an effective~~ A statement of authority is canceled by operation of law five years after the date on which the statement, or its most recent amendment, becomes effective filed by the secretary of state under section 489.205, subsection 1, is effective until amended or canceled as provided in subsection 2, unless an earlier cancellation date is specified in the statement. This cancellation operates without need for any recording under subsection 6 or 7.

Sec. 3. Section 501B.7, subsection 7, Code 2013, is amended to read as follows:

7. ~~Unless canceled earlier, a filed~~ A statement of authority and its most recent amendment expire five years after the date of the most recent filing filed by the county recorder as provided in subsection 2 is effective until amended or canceled, unless an earlier cancellation date is specified in the statement.

DIVISION II

LIMITED LIABILITY COMPANIES

Sec. 4. NEW SECTION. 489.407A Real estate interest transferred by limited liability company or foreign limited liability company.

1. A transfer of an interest in real estate situated in this state held by a limited liability company or a foreign limited

1 liability company authorized to transact business in this state  
2 is subject to the provisions of this section.

3 2. *a.* In a member-managed company, a transfer of an  
4 interest in real estate held by the company may be undertaken  
5 by any of the following:

6 (1) As provided in the operating agreement, or if the  
7 operating agreement does not so provide, only with the consent  
8 of all members.

9 (2) As provided in a statement of authority filed by the  
10 company with the secretary of state and the recorder of the  
11 county where the real estate is situated pursuant to section  
12 489.302.

13 *b.* A requirement of paragraph "a" is applicable to every  
14 transfer of an interest in real estate situated in this state  
15 held by a member-managed company, whether or not the transfer  
16 is in the ordinary course of the company's business.

17 3. *a.* In a manager-managed company, a transfer of an  
18 interest in real estate held by the company may be undertaken  
19 by any of the following:

20 (1) As provided in the operating agreement, or if the  
21 operating agreement does not so provide, only with the consent  
22 of a majority of all managers.

23 (2) As provided in a statement of authority filed by the  
24 company with the secretary of state and the recorder of the  
25 county where the real estate is situated pursuant to section  
26 489.302.

27 *b.* A requirement in paragraph "a" is applicable to every  
28 transfer of an interest in real estate situated in this state  
29 held by a manager-managed limited liability company, whether  
30 or not the transfer is in the ordinary course of the company's  
31 business.

32 DIVISION III

33 TRANSFERS BY ENTITIES — WARRANTY AND STATUTE OF LIMITATIONS

34 Sec. 5. NEW SECTION. 558.72 Real estate transfers by  
35 certain entities.

1     1. As used in this section, unless the context otherwise  
2 requires:

3     a. "*Entity*" means any of the following:

4       (1) A partnership, limited liability partnership, or  
5 foreign limited liability partnership as provided in chapter  
6 486A.

7       (2) A limited partnership, foreign limited partnership,  
8 limited liability limited partnership, or foreign limited  
9 liability limited partnership as provided in chapter 488.

10      (3) A limited liability company or foreign limited  
11 liability company as provided in chapter 489.

12      (4) A corporation or foreign corporation as provided in  
13 chapter 490 or a nonprofit corporation or foreign nonprofit  
14 corporation as provided in chapter 504.

15      (5) A cooperative association as provided in chapter 497  
16 or 498; an association, corporation, or foreign corporation  
17 as provided in chapter 499; a cooperative as provided in  
18 chapter 499A; a cooperative as provided in chapter 501; or a  
19 cooperative or foreign cooperative as provided in chapter 501A.

20      (6) An unincorporated nonprofit association as provided in  
21 chapter 501B.

22     b. "*Instrument transferring an interest in real estate*" means  
23 a deed, real estate contract, lease, easement, mortgage, deed  
24 of trust, or any other instrument used to effect the transfer  
25 of an interest in real estate situated in this state by any act  
26 to sell, transfer, convey, assign, lease, mortgage, or encumber  
27 the interest in the real estate.

28     2. An instrument transferring an interest in real estate  
29 situated in this state by an entity, unless clearly and  
30 conspicuously provided to the contrary in the instrument,  
31 includes a warranty to the transferee by the person executing  
32 the instrument of all of the following:

33     a. That the transferor entity is in existence at the time of  
34 the transfer.

35     b. That the person executing the instrument has been duly

1 authorized by the transferor entity to execute the instrument  
2 on behalf of the entity.

3     *c.* That the person executing the instrument has the legal  
4 capacity to execute the instrument.

5     *d.* That the person knows of no facts or legal claims that  
6 might impair the validity of the transfer, including whether  
7 the instrument was given in the ordinary course of business.

8     3. An action to invalidate a transfer of real estate by deed  
9 or real estate contract by an entity shall be subject to the  
10 time limitations set forth in section 614.14A.

11     Sec. 6. NEW SECTION.   **614.14A Real estate interests**  
12 **transferred by entities.**

13     1. As used in this section, unless the context otherwise  
14 requires:

15     *a.* (1) "*Adverse claim*" means a claim that the transfer  
16 of an interest in real estate to a transferee is invalid and  
17 should be set aside based on an allegation that the execution  
18 and delivery of a deed or real estate contract was not  
19 authorized by the entity.

20     (2) "*Adverse claim*" does not include a claim that a deed or  
21 real estate contract purports to transfer a greater interest  
22 than the entity legally could transfer.

23     *b.* "*Entity*" means the same as defined in section 558.72.

24     2. A transfer of an interest in real estate situated in this  
25 state by an entity by a deed or real estate contract is subject  
26 to the provisions of this section.

27     3. *a.* With regard to any deed or real estate contract  
28 executed by an entity and filed of record with the recorder  
29 of the county in which the real estate is situated, which is  
30 recorded prior to the effective date of this Act, the holder of  
31 an adverse claim shall not file an action, at law or in equity,  
32 to enforce the adverse claim or to invalidate such transfer two  
33 years after the effective date of this Act.

34     *b.* With regard to any deed or real estate contract executed  
35 by an entity and filed of record with the recorder of the

1 county in which the real estate is situated, which is recorded  
2 on or after the effective date of this Act, the holder of an  
3 adverse claim shall not file an action, at law or in equity, to  
4 enforce the adverse claim or to invalidate such transfer more  
5 than two years after the date of recording of the instrument.

6 4. This section shall not be construed to limit any personal  
7 action against a person who executed an instrument purportedly  
8 transferring an interest in real estate on behalf of an entity  
9 for damages based on a claim arising out of an allegation that  
10 the execution and delivery of the instrument was not authorized  
11 by the entity or that a warranty required in section 558.72 was  
12 false.

13 EXPLANATION

14 GENERAL. This bill addresses issues involving the execution  
15 of instruments conveying an interest in real estate by certain  
16 entities, including by providing for filing statements of  
17 authority, creating a general warranty, and creating a statute  
18 of limitations.

19 BACKGROUND. The bill amends provisions which relate to  
20 business entities (referred to as "entities") that are formed  
21 under the laws of this state or organized under the laws of  
22 a different state, and allowed to do business in this state,  
23 by filing certain documents with the secretary of state and  
24 conducting operations in a manner consistent with those laws.  
25 In the case of a domestic entity, the secretary of state  
26 recognizes its existence and in the case of a foreign entity,  
27 the secretary of state authorizes its right to do business in  
28 this state. Each of the various types of business entities  
29 is governed by a separate Code chapter, often derived from  
30 legislation proposed by national organizations such as uniform  
31 acts by the national conference of commissioners on uniform  
32 state laws including the revised uniform partnership Act herein  
33 referred to as "UPA" (Code chapter 486A), the uniform limited  
34 partnership Act referred to as "ULPA" (Code chapter 488),  
35 the revised uniform limited liability company Act referred

1 to as "RULLCA" (Code chapter 489), and the revised uniform  
 2 unincorporated nonprofit associations Act referred to as  
 3 "RUUNAA" (Code chapter 501B). Alternatively, several Code  
 4 chapters derive from model legislation proposed by the American  
 5 bar association including the Iowa business corporation Act  
 6 referred to as "IBCA" (Code chapter 490) and the revised  
 7 Iowa nonprofit corporation Act referred to as "RINCA" (Code  
 8 chapter 504). Iowa uniquely includes a number of Code chapters  
 9 governing cooperative associations, sometimes simply known  
 10 as cooperatives, including several types of cooperatives  
 11 originally chartered before July 1, 1935 (Code chapters 497  
 12 and 498), and those sometimes referred to as traditional  
 13 cooperatives (Code chapter 499) or closed cooperatives (Code  
 14 chapter 501). Iowa also recognizes a type of cooperative,  
 15 a cooperative-corporation, under the Iowa cooperative  
 16 associations Act referred to as "ICAA" which in some form has  
 17 been enacted in other states (Code chapter 501A). A special  
 18 chapter governs multiple housing organizations organized on  
 19 a cooperative basis (Code chapter 499A). Notwithstanding  
 20 that these chapters originate from different sources, their  
 21 provisions are often very similar.

22     TRANSFER OF REAL ESTATE — STATEMENT OF AUTHORITY. The  
 23 bill amends provisions in the UPA, RULLCA, and RUUNAA, that  
 24 allow an entity to file a statement of authority with the  
 25 secretary of state or in the case of RUUNAA a county recorder.  
 26 The statement serves to establish a person who has authority  
 27 to execute a deed or other instrument conveying an interest  
 28 in real estate on behalf of the entity. The bill changes  
 29 the effective time period of a filed statement of authority.  
 30 Currently, the statement is canceled by five years after the  
 31 date the statement became effective. The bill provides that  
 32 the statement is effective indefinitely until amended or  
 33 canceled, unless an earlier cancellation date is specified in  
 34 the statement.

35     TRANSFER OF REAL ESTATE BY LIMITED LIABILITY COMPANIES.

1 The bill amends provisions in the RULLCA by providing that a  
2 member-managed or manager-managed limited liability company  
3 may provide for the transfer of an interest in real estate  
4 as provided in the company's operating agreement, or with  
5 the consent of all the company's members or majority of all  
6 managers, or as provided in a statement of authority.

7     TRANSFER OF REAL ESTATE BY ENTITIES — WARRANTY. The bill  
8 provides that unless clearly and conspicuously disclaimed in  
9 an instrument transferring an interest in real estate situated  
10 in this state by an entity, the instrument (e.g., deed, real  
11 estate contract, lease, easement, mortgage, or deed of trust),  
12 includes a warranty that the entity is in existence at the time  
13 of the transfer, the person executing the transfer instrument  
14 has been duly authorized by the entity to execute the transfer  
15 instrument on behalf of the entity, the person executing the  
16 transfer instrument has the legal capacity to execute the  
17 transfer instrument, and the person knows of no facts or legal  
18 claims that might impair the validity of the transfer.

19     TRANSFER OF REAL ESTATE BY ENTITIES — STATUTE OF  
20 LIMITATIONS. A statute of limitations establishes a length  
21 of time during which a person may pursue a legal remedy for a  
22 wrong, often measured from the date that the wrong occurs. One  
23 feature of a statute of limitations applied against real estate  
24 claims is that it affects marketability of title.

25     The bill addresses a claim alleging that a transfer of real  
26 estate by an entity was invalid and should be set aside. Under  
27 current law, after 1992, certain claims involving real estate  
28 must be brought within 10 years after the claims first arose  
29 (Code section 614.17A), but the time period is not applicable  
30 in some cases to minors or persons suffering from mental  
31 illness (Code section 619.19) or to spousal dower rights (Code  
32 section 614.20). The statute of limitations is one year for a  
33 transfer involving a trustee (Code section 614.14).

34     The bill establishes a two-year statute of limitations by a  
35 person for challenging the authority of a person who executes



1 a deed or real estate contract on behalf of an entity. The  
2 holder of an adverse claim for a deed or real estate contract  
3 executed and recorded prior to the effective date of the bill,  
4 must file an action within two years after the effective  
5 date. Otherwise, the holder must file an action two years  
6 after the recording of the instrument. The bill affects the  
7 real estate's marketable title. The bill does not affect an  
8 entity's claim for damages against a person who did not have  
9 the authority to transfer an interest in the entity's real  
10 estate.